

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

JESUS ISRAEL LOPEZ-RODRIGUEZ,

Defendant.

CASE NO. 8:11CR72

TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 114, 116). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

Neither party objected initially to the probation officer.

The government merely stated in its filed objections that it “objects to the Revised [PSR]” and “stands by the plea agreement.” The government has provided no basis for its objection, and therefore the Court cannot evaluate its objection. The government is advised that the Order on sentencing Schedule requires that “the specific nature of each objection” be stated. (Filing No. 87, at 2.) The government's unspecified objection is denied.

The Defendant's request to file its objections out of time is granted. The Defendant objects to ¶ 38. In the plea agreement, the parties agreed upon a drug quantity of at least 1.5 but less than 5 kilograms of methamphetamine and the application of base offense level

34. With the downward role adjustment under U.S.S.G. § 3B1.2, the base offense level would become 31 under U.S.S.G. § 2D1.1(a)(5)(ii).

However, the probation officer determined that the drug quantity was 2.29 kilograms of actual methamphetamine, resulting in an initial base offense level of 38. After the adjustment under § 3B1.2, the application of § 2D1.1(a)(5)(iii) resulted in the base offense level of 34 being reported in ¶ 38 of the PSR.

The Court intends to honor the drug quantity agreed upon by the parties in the plea agreement. Therefore, the Court's tentative findings are that the Defendant's objections are granted and the total offense level is 22.

IT IS ORDERED:

1. The Defendant's objections to ¶ 38 of the PSR are granted;
2. The government's objections the PSR are denied;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and
5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 21st day of November, 2011.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge